

STEVEN L. BESHEAR
GOVERNOR



ROBERT D. VANCE
SECRETARY

**PUBLIC PROTECTION CABINET
OFFICE OF LEGAL SERVICES
HOUSING, BUILDINGS AND CONSTRUCTION LEGAL DIVISION
DAWN MICHELE BELLIS, ESQ.
GENERAL COUNSEL
101 SEA HERO ROAD, SUITE 100
FRANKFORT, KENTUCKY 40601-5405
TELEPHONE: (502) 573-0394
FAX: (502) 573-1057
WEB SITE: WWW.DHBC.KY.GOV**

The process for adopting the Codes for the Department of Housing, Buildings and Construction follows the same procedures as any regulatory amendment and new regulation. (Note: for purposes of this memo, I will reference a regulatory amendment but the process for a new regulation is the same)

Committee and/or Board Review & Promulgation

The Code is first brought before the affected committees and boards for comments and recommendations in accordance with the requirements of KRS 198B.030(9) and (10) and 198B.040(11). The boards and committees can either:

1. Recommend adoption as presented;
2. Amend and recommend adoption as amended;
3. Recommend against adoption; or
4. Make no formal recommendation.

Once all committees and affected boards have commented, or have been given the opportunity to comment, the code goes before the Big Board for approval, amendment or rejection. The exceptions are the Kentucky State Plumbing Code which is promulgated by the Commissioner and therefore, does not go to the Big Board for approval; and the mechanical code, which is approved and promulgated by the HVAC Board.

Filing of Regulations and Regulatory Amendments

If approved, a regulatory amendment is filed for 815 KAR 7:120 Kentucky Building Code; 815 KAR 7:125 Kentucky Residential Code; and, in the case of the National Electric Code, 815 KAR 10:060 Standards of Safety. Each of these regulations establishes the respective codes which incorporate supplementary codes by reference.

Once filed with LRC by the monthly deadline (the 15th), the regulation is published the 1st day of the following month. This begins the public comments period during which anyone may request a public hearing relating to the amendment or submit written comments. The comments period ends on the final day of the month at midnight.

If no comments are received nor public hearing requested, the regulation goes before the Administrative Regulatory Review Subcommittee ("ARRS") that second full month (generally

held on the 2nd Tuesday of the month at 1:00 pm). Currently, Representative Leslie Combs and Senator Elizabeth Tori are the co-chairs of this subcommittee and alternate months acting as chair for the committee.

If, however, comments are received or a public hearing is requested and held, the regulation is automatically deferred and scheduled for review in the third full month. The agency must submit responses to each and every comment received (whether oral or written) during the comments period, even if the comment was "GREAT JOB! This amendment is exactly what the Commonwealth needs."

Legislative Committee Review(s)

When before ARRS for review, typically I am present, the Commissioner and the Division Director whose program is affected by the regulatory amendment. We respond to any questions posed by members of the committee and address any concerns that have been brought to their attention. Anyone can attend these public meetings and sign in to comment on regulations. If a member of the public wishes to speak, they may be recognized by the chair and approach to offer comments. The committee then allows the Department to respond, if needed.

ARRS, at its discretion, may move the regulation through, ask the agency to agree to amending the regulation as presented, request that the agency "defer" the regulation until more information is received or concerns addressed or find the regulation "deficient."

'Approved'

If the regulation is moved through ARRS, it is then assigned to second committee (typically on the first Monday of the following month). The 2nd committee (typical Licensing & Occupations or Local Government for HBC regulations) has 30 days after assignment during which to "pull" the regulation for further review. If the regulation goes before the second committee, the committee has the same options as ARRS as to the regulations (pass, ask agency to agree to amending regulation as presented, request deferral, or find deficient). If the committee "passes" the regulation, it becomes effective upon adjournment of the meeting.

If the regulation is moved through ARRS and the 2nd committee chooses not to "pull" the regulation for further review, the regulation becomes effective 30 days after assignment to the 2nd committee.

Committee Amendments

If the agency agrees to amend the regulation during ARRS review, the amended regulation is then assigned to the second committee per protocol. The 2nd committee (typical Licensing & Occupations or Local Government for HBC regulations) has 30 days after assignment during which to "pull" the regulation for further review. If the regulation goes before the second committee, the committee has the same options as ARRS as to the regulations (pass, ask agency to agree to amending regulation as presented, request deferral, or find deficient). If the committee "passes" the regulation, it becomes effective upon adjournment of the meeting.

If the regulation is moved through ARRS and the 2nd committee chooses not to “pull” the regulation for further review, the regulation becomes effective 30 days after assignment to the 2nd committee.

Deferrals

If the regulation is “deferred” at ARRS, the agency works towards resolution in finding agreement with anyone opposing the regulation or to find information requested by the Committee. The regulation is then put on the following month’s agenda and moves on through the process described above.

Deficiencies

If, however, the regulation is found “deficient” by ARRS (or the 2nd committee), it is DEAD. The regulation moves no further through the process, the regulation is not enacted, and NO AMENDMENT CAN BE FILED ON THAT REGULATION FOR AN ENTIRE CALENDAR YEAR. This is the death penalty for any regulation. For instance, if an amendment to the Building Code is found deficient that relates to sprinklers, the entire 7:120 cannot be amended for the full year—not just provisions relating to sprinklers. This ‘smack-down’ authority, if you will, is designed to keep agencies from presenting frivolous and non-statutorily authorized regulations or amendments.

If you are still reading this, you are either more confused than you were before I started OR you may well be on your way through the regulatory/code adoption maze that HBC must maneuver through on each regulation filed. I think I covered the basics and the most likely scenarios of a regulation on its way to being effective. I hope this has been helpful.

Best regards,

Dawn M. Bellis, Esq.

General Counsel

Housing, Buildings, & Construction Legal Division